

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of the)	
)	
Rules and Regulations Implementing)	
)	CG Docket No. 02-278
the Telephone Consumer Protection)	
)	
Act of 1991)	

Joe Shields Comment on the United Healthcare Services Inc. Ex Parte Presentation

United Healthcare Services Inc. (hereinafter “UHSI”) filed an Ex Parte Presentation with the Commission on June 9th, 2015. In the Ex Parte Presentation UHSI reiterated its delusional argument that automatically dialed or prerecorded message/text “intended” called party calls made to cell numbers merit an exemption from the TCPA¹ and reiterated its two-phased approach to creating such a meritless exemption.

As a threshold matter UHSI has never addressed the fact that cell numbers are not immediately reassigned. Most if not all cell numbers are kept in an unassigned pool for 90 days to avoid burdening cell phone customers with calls to previous subscribers. This method of holding newly disconnected numbers in an unassigned pool for 90 days has worked for decades as proven by the lack of any carrier action to change the status quo.

In that regard UHSI has never addressed the infallible method of removing disconnected numbers before they are reassigned that will eliminate most automatically dialed or prerecorded message/text calls to reassigned cell numbers. UHSI two-phased approach never considers or even addresses this infallible method.

¹ Courts have consistently rejected such an interpretation - at least 32 Federal courts and 2 federal appellate courts have rejected the “intended” called party defense. See list attached to my comments on the Wells Fargo Ex Parte Presentation filed 06-10-15.

Programming dialers and instructing employees to recognize disconnect messages is imperative if the rampant calls to reassigned numbers by every possible industry are to be contained. Further, callers can make manual dialed calls to stale cell phone numbers that have not been called in the last 90 days. This will eliminate tens of thousands of automatically dialed or prerecorded message/text calls to stale cell phone numbers made every day by a wide range of industries.

Making tens of thousands of reassigned number calls doesn't cost UHSI anything! The UHSI dialer will continue to make millions of automatically dialed or prerecorded message/text calls to reassigned cell phone numbers under UHSI's two-phased approach. As previously pointed out, such an approach shifts compliance with the TCPA from the caller to the called party. See UHSI Exhibit 1 - last paragraph suggesting it should be the consumer's responsibility to block unwanted calls with the implication that automatically dialed or prerecorded message/text calls to reassigned cell phone numbers can continue unendingly and the caller has no responsibility whatsoever to stop the calls. That is not what Congress intended!

I also take issue with UHSI claim that flu shot reminders, using fancy language of "medication adherence programs", are not promoting the callers service. No rational business gives customers free goods and services out of altruistic motives, but rather do so with the calculated aim of enticing the recipient to couple the freebie with the purchase of other items. Flu shot reminders are meant solely to maximize customer satisfaction and entice recipients of such calls to avail themselves of the caller's services.

It is clearly evident that key players covering a wide group of industries are already trying to expand Chairman Wheeler's proposed "very limited and specific"

exemptions for urgent circumstances. UHSI's flu shot reminders is an example of how industry will expand on Chairman Wheeler's proposal.

The Commission must admit that given an inch this wide group of industries will take a mile! Eileen Harrington, the Federal Trade Commission's point person on the national do-not-call list stated:

"This industry since 1995 has had a chance to make a company-specific do-not-call system work," Harrington said. This is an industry that was given more than an inch and has taken more than a mile. Harrington said, she was aware that telemarketers often try to circumvent the rules by hanging up when consumers ask to be placed on their DNC lists."²

Hanging up on consumers that try to explain that the caller has reached a reassigned number will become commonplace. Claiming their automated system did not capture a consumers notice that the caller has reached a reassigned number will also become commonplace. Any well-meant exemption will unquestionably be abused by industry!

The Commission must not be naïve and be deceived by the misrepresentations made by UHSI in their petition and comments. UHSI does not now nor have they ever represented consumer interests. UHSI motive is driven by selfish greed and not out of any concerns for consumer well fare.

Chairman Wheeler's one call exemption or safe harbor will not put an end to reassigned number calls. It will only exacerbate the problem! It will create the same "confusion" that has led to the filing of one hundred and thirty-seven (137) petitions for a retroactive waiver of the Commission's rules. Exemptions for businesses in a consumer protection statute, no matter how well-crafted, create confusion and should be avoided.

² FTC Official Faces Industry Music - DM News June 24th, 2002 available at <http://www.dmnews.com/news/ftc-official-faces-industry-music/article/77929/>

The harassment of consumers with tens of thousands³ of automatically dialed or prerecorded message/text calls for an “intended” called party must end. The Commission must reject any attempt by industry to weaken the protections of the TCPA or to create confusion in the application of the TCPA.

Respectfully submitted,

_____/s/_____

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³ It is common for recipients of such intended called party calls to receive multiple calls every day and for such calls to continue for weeks if not months even after the caller was told to stop calling. See Original Complaint filed in *Nunes v. Twitter Inc.*, No. 14-02843 (N.D. Cal. 2014) “Despite receiving numerous express stop requests from cellular subscribers, Twitter continues to send automated text messages to these subscribers, sometimes for months afterwards.”